

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
Winstar Communications, Inc., .
et al., .
Debtor(s) . Bankruptcy #01-1430 (JCA)
.....

Wilmington, DE
April 15, 2002
10:00 a.m.

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE JOHN C. ACKARD
UNITED STATES BANKRUPTCY JUDGE

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THE CLERK: Court is reconvened. The Honorable John C. Ackard presiding.

THE COURT: Good morning ladies and gentlemen. Be seated please.

THE CLERK: Calling case 01-1430, Winstar Communications, Inc.

MR. SMOLEV: Good morning, Your Honor, Richard Smolev on behalf of Christine Shubert, the Chapter 7 Trustee. Ms. Shubert also is in Court. I don't know how Your Honor wants us to proceed. Ms. Shubert was on the stand, we were in the middle of cross examination, but there has been a great deal of conversation from that hearing to this point. I don't know if the Court would like some clarification, because I think that clarification may well expedite and focus whatever remaining testimony is necessary.

THE COURT: I would appreciate that.

MR. SMOLEV: Okay. With the indulgence of the Court, there are several people who I think are going to want to be heard on this issue, beginning with the position of the Trustee. We're dealing with a couple of issues. One is 365(d)(1), which is the 60-day deemed rejection period after a case gets converted. The second relevant provision is 2.5(a) of Asset Purchase Agreement, which is the 120-day period within which IDT had the right to direct Winstar to assume and assign some contracts. Your Honor already focused on this on

Thursday, so you're clearly conversant with that provision. The way that provision was designed to work, as I understand it, was that it was a bit of a moving target. IDT had a window within which they could direct us to assume and assign contracts. We then needed some time to process that request, if you will, because obviously the counter-parties to those contracts had to have notice, you had to go through the whole assumption and assignment process. It wasn't an automatic assumption and assignment.

So when our motion was filed, it was directed, really, at a couple of things. One, it was the class of contracts that were outside the Asset Purchase Agreement. And as Ms. Shubert testified Thursday, because of the size and complexity of the Estate, we're having some difficulty even understanding fully what all of those contracts are. We took Your Honor's direction on Thursday to heart and we directed our staff to do nothing over the weekend but identify contracts, and frankly, Judge, if there's more testimony today you'll learn from the former CFO of the company that we still can't identify all the contracts just because of the nature of the business. And so there is a grouping of contracts to which we are seeking sort of a general extension. I will call them the "excluded assets." That's not quite limited to that, but that's generally the class of contracts that we are talking about and our intent there is really quite simple. As

Ms. Shubert stated, we don't want to find out that a 60-day period has come and gone and we haven't acted and therefore we somehow have prejudiced ourselves from recovering on a contract.

The second type of contract for which we are seeking this relief are those contracts which could be brought into the Asset Purchase Agreement under the 120-day window of 2.5(a). Mechanically, what will happen there, and the contract was December 18th, IDT had a 120-day period to direct us to assume or assign. We needed to extend the (d)(1) 60-day deemed rejection period, so that if IDT directed us to assume and assign a contract within that 120-day window, we would still have a viable contract. We didn't want to find that we were directed to assume or assign a contract which had terminated by virtue of (d)(1).

We will not know the answer to the scope of the 2.5(a) list until April 18th. One of the difficulties, Your Honor, we ended the cross examination with a question from Verizon's counsel as to whether the Verizon contract, that particular service provider contract, was the subject of our Motion to Extend. The answer is we don't know yet, because we won't know until the expiration of this 120-day period whether we are -- whether that contract is to be brought within the embed of APA.

That is the Trustee's position. When the hearing

continues, we will provide some testimony as to the specifics of the contracts that we know we do want assumed and assigned and the reasons that we can't fully identify the universe, but I will save that for another point in the hearing.

I think in fairness, so that the Court fully understands the records, perhaps counsel for IDT and the service providers, in whatever order Your Honor wants to hear them, should also help frame the issues for this morning's hearing. Thank you.

THE COURT: I would appreciate that, thank you. Let me first hear from the Purchaser's counsel, and then we'll hear from the various parties.

MR. ALBALAH: Thank you, Your Honor. David Albalah from McDermott, Will & Emery on behalf of the Buyer. I agree with the recitation of facts by Trustee's counsel. I want to add one additional point, however, and that is, as Your Honor knows, the Trustee is operating a telecom business and we are managing it under the Management Agreement. We believe the Trustee needs time to make the decisions, or in conjunction with us as managing the business, to make the decisions as to whether to assume and reject the literally thousands and thousands of executory contracts and unexpired leases. That dovetails, obviously, into the Buyer's regulatory compliance period. Quite simply, that period is 120 days, subject to extension. That was explicitly contemplated and provided for

in the Sale Approval Order.

THE COURT: Would you give me a specific reference, please sir?

MR. ALBALAH: Your Honor, it's page 17 of the Sale Approval Order, paragraph 23.

THE COURT: All right, sir. Thank you.

MR. ALBALAH: Quite simply, for reasons that the Trustee has begun to testify, for the reasons that other representatives of the Estate will testify, with respect to the excluded assets and the included assets, the Buyer has a herculean task of culling through thousands and thousands of contracts with virtually no due diligence to determine what to do. It has a new management team. It simply cannot by Thursday of this week in any cohesive, well-thought-out, appropriate manner, make all of those decisions.

I would like to remind the Court, because you are new in this case, when Buyer came here on December 17th, 2001, the Debtors had engaged in a lengthy auction and bidding process that frankly came up empty. Debtors' counsel was in chambers with Judge Farnan, they came out, they said they were gonna convert the case to Chapter 7. We were the only bidders that had money to close the transaction. We said, "Your Honor, Chapter 11 Debtor, we'll buy the company; don't convert the case." At the time, the Court had issued an injunction compelling the carriers to continue to provide service even

though there was no doubt that they would not get paid for that service and they had been providing service and they would not get paid for the service that they had been provided, simply because this case, despite \$11 billion in market capitalization, \$6 billion in assets and a \$175 million Debtor-in-Possession financing in April of '01, yielded at auction, ultimately, \$42 million. So the Estate was woefully administratively insolvent. There was no money to pay the carriers. We came to Court. We said we'll buy the company. The Court said come back tomorrow, Tuesday, at noon with a signed purchase agreement, and we'll have a hearing. We did that. We came back. It was Tuesday night. We had sort of the same dynamics now that we had then, namely, the carriers wanting to get paid for the old stuff, meaning pre-closing.

During the last approximately 4 months, we have been working around the clock, and I can tell you, and you can hear testimony about the efforts that we have made, we have made great strides. We are well along. We simply need more time to finish that process.

The concept of assuming the agreements with the carriers, I submit, simply makes no sense. These are not like leases where a landlord need not give you the premises unless you strike a deal. Or regular contracts, where people can bargain for whatever they want. These are agreements subject to the Telecommunications Act of 1996, which, very simply,

provides that if Buyer as a licensed company wants services, and if the carriers as a licensed provider wants services, they have to do a deal. And in this case, that process is relatively far along. By way of example, in the Qwest case, Qwest and Buyer signed an interconnection agreement which was scheduled to be heard by the PUC, the State Public Utility Commission, as a no-action item. Because it's routine. We would have been provisioned to provide services under the Telecommunications Act. It was scheduled for March 27th. Late in the evening on March 26th, an objection to Qwest's own interconnection agreement was filed.

I submit, what's obviously going on here is that Qwest and the carriers are delaying the regulatory process in order to exert leverage in this Honor's Court, to compel Buyer to assume the agreements and thereby pay the cures. It was never contemplated to assume these agreements. There's no reason to assume these agreements, because we're entitled to the services as a matter of Telecom Law.

What happened, Your Honor, on that Tuesday evening of December 18th, when we had the similar dynamic, Judge Farnan, after me saying that we can go home and the carriers will be forced to continue to provide services and not get paid, the Court, I respectfully submit, called the carriers' bluff and the Court said, fine, we won't approve this deal and the Court recessed. That night and that morning, we ultimately struck a

deal which is evidence by the Sale Approval Order that is consensual. Any objections to this deal were withdrawn. We have a consensual deal.

Therefore, what we're asking for, Your Honor, is simply more time so we can continue to manage the business. Every single service provider during our tenure, from the closing date forward, has received 100 cents on the dollar in advance. There is absolutely no prejudice to the service providers to extend the regulatory compliance period, which specifically contemplated its extension.

By way of introduction, Your Honor, I think that sets it out. This is the Trustee's motion which we have joined. I believed the FCC, who is represented in Court, would like to be heard in support of the request.

THE COURT: I'll hear from all parties. Thank you.

MR. SHERMAN: Good morning, Your Honor. Andrew Sherman, Sills, Cummis on behalf of Qwest Corporation and Qwest Communications Corporation. Your Honor, the recitation of facts or testimony, I'm not sure what Mr. Albalah just stated, on one level Qwest disagrees with technically almost every statement made by Mr. Albalah and it seems to be a creative view of history in the facts. But assuming, and sort of in the context of the 12(b)(6), that Mr. Albalah is 100 percent right in what he said, then there is no reason for an extension. Because if Mr. Albalah is right, IDT or New

Winstar does not need the carriers. They have the option under the Telcom Act of 1996 to opt into any agreements, so why is an extension necessary? I'm at a loss. There seems to be a disjoinder, a schism, between what Mr. Albalah said and what he's asking for.

But to focus Your Honor on sort of where we are and what today's hearing is about, it's about 365. Simply, whether the Trustee can obtain more time to assume or reject leases. It's not about IDT, it's not about anything else. That's the motion that was filed by the Court. There was a joinder. I believe Qwest objected on standing grounds, and Your Honor, I think I made that objection earlier when Your Honor stated that he would hear from everybody, which is fine, but I can't see how if IDT is trying to maneuver this process to ask for their extension, then obviously we object to and I point Your Honor to Section 2.5 of the APA, Section 2.5(a) which states, from and after the closing date until 120 days thereafter, there is no extension period sought -- I mean there is no -- excuse me -- no extension period provided in 2.5(a). So there might be a conflict between the APA and the Sale Order. We believe that the APA should control. That was the meeting of the minds between the parties.

And then just sort of to complete the record, Your Honor, as far as where we have been since Thursday, I commend IDT on its efforts with New Winstar in getting information to

the carriers, in providing an offer to Qwest. Unfortunately, Your Honor, as we sit here, or as I speak to you, right now I don't believe that we do have a deal, although for the first time during the 120-day period that IDT was provided, at least we were talking, which I think was positive, as a result of Your Honor's ruling. So, I cannot report to you today that we have a deal. We have made progress and I do commend the efforts of New Winstar to get us at least getting down the road of reaching a resolution which is what Bankruptcy Court is all about, as Your Honor is well aware.

So that's really what I have to say as far as an introductory statement. I would just ask the Court to look only to 365.

THE COURT: Thank you.

MS. SILVERSTEIN: Your Honor, Laurie Silverstein on behalf of certain affiliates of SBC Communications, which is another telecommunications provider. And Your Honor, I'll say right now, I have a previous contested hearing at 12, so I may have to leave early if you're still going, but I will stay as long as I can.

THE COURT: You're welcome to leave whenever you need to.

MS. SILVERSTEIN: Thank you, Your Honor. Your Honor, I disagree strongly with Mr. Albalah's characterization of the events that happened in connection with this sale, and

specifically, Your Honor, I'll mention a few matters and then I'll turn to what I think we are addressing today and the concessions, I think, that Mr. Albalah just made, which are absolutely fatal to the motion that's before you today.

The Order that was entered was not consensual. It was subject to negotiation, but when submitted to Judge Farnan, was submitted with a letter that specifically indicated that all parties were reserving their rights and objections, and it was not. I wish I had it in front of me with the exact words so I could be precise. The parties did not, for example, give up their right to appeal. So this was in no way a consensual order, although it was subject to heavy negotiation. Judge Farnan did enter an Ex Parte TRO requiring service providers to continue to provide service under certain circumstances, and he indicated at the sale hearing that he would schedule a hearing on what he realized was an Ex Parte TRO, if still necessary. Parties did not take him up on that offer, but that was an Ex Parte TRO.

What we heard today was that the New Winstar, the Purchaser, never had any intention to assume any of these agreements. Never. From the time of closing till today, till next week, till two months from now, never any intention of assuming these agreements. Always, its intention to simply use these agreements and the services provided thereunder to meet its own objective, which is to get around the assumption

and assignment of these agreements. And therefore, the cure due to the telecommunications companies under the code by going outside of the agreement, taking the 120-day regulatory period, and using the Telecommunications Act to get what they can get, separately and apart, so that they would not have to pay the cure amounts. And that's what we heard today. I suggest that's what we heard for the first time. We did not hear that in front of Judge Farnan. There was not testimony at the sale hearing that the Purchaser had no intention whatsoever of ever assuming these agreements, and they had every intention to reject these agreements.

Now, Mr. Albalah tried to rewrite history on the Order. He also tried to rewrite the history we heard last Thursday. The Trustee was very clear. She is not operating this business. She reiterated that testimony multiple times.

IDT, the New Winstar, is operating this business. She, the Trustee, needs no time to make any decision on whether to assume or reject these agreements, because she's not operating it and IDT, to the extent that's relevant, needs no time to any further decision whether to assume or reject these agreements, because they've told Your Honor they're not assuming them.

So as opposed to the twist that Mr. Albalah would put on this, that we are somehow trying to take advantage of the system, it's clear that it's IDT who's trying to take

advantage of the system. And we need to make the distinction, Your Honor, between the 120-day regulatory period, which was their period to go out and get their licenses, so that they could then be able to strike their own agreements if they so chose, or so that they could assume these agreements, because they couldn't assume them if they weren't licensed. First, they have no intention of assuming them, but they couldn't have if they're not licensed. That 120-day period, which does by the Order appear to be extendable, although there's been no motion made to extend that period. And the 365(d)(4) period, which does not, as I can see in my quick review as this came up this morning of the Order, say it is subject to extension by virtue of the regulatory period. They're not tied in that way. And as Mr. Sherman pointed out, Section 2.5 of the Asset Purchase Agreement gives the Buyer until 120 days. It doesn't say subject to extension, and it says they shall assume and assign. It actually doesn't say they'll make their motion. It says they'll assume and assign. So within the 365(d)(4) period, one could certainly read the 120-day period, meaning it's gotta be done by then.

I think the issue we're focused on today is the narrow issue of 365(d)(4), whether this Trustee needs any additional time to make a decision. And as to the contracts for the service providers, in any event, she needs no more time, and she certainly doesn't need any more than the 120-day

period. but I'd say she needs no more time because Mr. Albalah has told you, they are not assuming a contract. There's no decision to be made. The decision has been made.

Your Honor, for those reasons, we think the issue is pretty narrow. The regulatory period is a red herring. It's really a separate period for their licensing. They're trying to get around their obligations to cure contracts and they have never, we heard today, never any intention of taking them. So in essence, I think this has been somewhat of a farce.

And as a last comment, I would add that Mr. Albalah indicates that carriers have been paid in full. My client, the FCC affiliates, are owed \$4 million in connection with the services that have been provided post-closing. We have made IDT aware of that. They may disagree with that, we don't know. As far as we know, they have not filed disputes on our bills, but we're owed \$4 million. And, Your Honor, as I understand it, the escrow that was provided for in the Order to cover expenses during this period, as I understand it from speaking with Mr. Albalah last week, is depleted. It has been run through and there is no further money. \$60 million has been depleted in this 120-day period. So, for all those reasons, Your Honor, I think that frames the issue and we think the motion should be denied.

MR. LADDIN: Good morning, Your Honor. Darryl Laddin

on behalf of the operating telephone company subsidiaries of Verizon Communications, Inc. Your Honor, I'll try to be brief and not to reiterate too much of what Mr. Sherman and Ms. Silverstein said on behalf of Qwest and SBC. I do think though, first, it is important to understand exactly what's before the Court right now, because that's what the Court has to rule on.

The Trustee has clarified exactly the relief that the Trustee is seeking. The Trustee filed a motion under Section 365, solely under Section 365, to extend the time to assume or reject contracts. There is no motion pending before the Court with respect to the regulatory compliance period. There is no motion pending before the Court with respect to the 120-day period set forth in Section 2.5(a) of the Asset Purchase Agreement that is the time within which IDT can assume or reject contracts. What I think I heard counsel for the Trustee state with respect to the Motion to Extend the Time to Assume or Reject, is that he is only seeking -- or she is only seeking -- to extend that time with respect to contracts that could be assumed, only seeking to extend that time through the 120-day period that would be provided in Section 2.5(a) of the Asset Purchase Agreement. So that Section 365 would be coterminous with the 120-day period. And I think we understand that the 120-day period would expire on approximately April 18th.

On behalf of Verizon, we agree that the appropriate time to assume or reject any of the contracts that would be potentially assumable under the Asset Purchase Agreement, including all of the contracts with Verizon, should be coterminous, coextensive, with that 120-day period, and it should run through April 18th. That's what the parties bargained for. We believe that's the right thing.

We don't believe that that period under Section 365 should be extended in any way. First, just as a procedural matter, as I indicated, there is no motion now before the Court to extend the time period under Section 365 past April 18th. There's nothing to go forward on. If IDT had wanted an extension of the time to resume or reject, they could have filed that motion. They didn't. Your Honor has heard this morning from Mr. Albalah that they don't have any intention of assuming any of those contracts.

There would also be, for that matter, Your Honor, absolutely no justification whatsoever for extending the 120-day period. IDT did due diligence on this company before they made the bid. My understanding is that they made a bid prior to December 17th. That bid was rejected. They have had a full 120 days. In fact, they have advised Verizon, as testimony would show if we end up going through evidentiary hearing today, that in fact they have sent letters to Verizon very specifically identifying which circuits and which resale

lines, they want to keep. By implication, they have decided which ones they don't want to keep. The testimony would also show that they would, in fact, be required to take an assignment, to have an assumption and assignment in order to be able to keep the specific circuits that they have asked for, and they have specifically informed Verizon that they intend to keep the specific circuits. Testimony would show that they don't have the rights Mr. Albalah would have the Court believe. They do not have an independent right to those circuits. They, very simply put, Your Honor, have until April 18th to make a decision. If they want to assume the contracts and have them assigned to them, that's fine. If they don't, they understand the consequences. We think Your Honor should not extend the period past April 18th. Thank you.

THE COURT: Thank you.

MR. WHITE: Your Honor, William White on behalf of Bell South. I have nothing further to add. I support the comments of the counsel for Qwest, SBC and Verizon, and the arguments that they made to Your Honor. Thank you.

THE COURT: Thank you.

MR. STRATTON: Good morning, Your Honor. David Stratton for Cisco Systems Capital Corporation. Much of the fight that's before Your Honor this morning I don't think directly affects Cisco or, in fact, I think the other equipment lessors, but I don't want to speak for them, I'll

speak for Cisco. The reason for that is that we have agreed that this period of time created under Judge Farnan's Order of December 19 shall be and can be extended pursuant to a stipulation that's been negotiated between Defendants in a number of adversary proceedings and Winstar Holdings.

The issue that I wanted to bring to the Court's attention is this. On February 11th, Judge Katz entered an Order directing Winstar Holdings to make payments to Cisco and a group of other equipment lessors for the period from December 19 to February 11, and then following that date, to make current payments on the all the equipment leases of those identified equipment lessors. We did receive the payment for the period from the 19th of December to the 11th of February. However, Your Honor, we have not been paid since then.

Last week I brought this fact to the attention of Holdings attorneys, and the response was, "well, we've been negotiating a settlement with your client, we think we've reached an agreement, so we don't have to pay you." There's two problems with that argument. One, the Order says what it says, and until you have an explicit agreement to waive the protection of the Order, I think you have an obligation to observe its terms, and not to decide on your own that you don't need to. And secondly, my client is very clear that the entitlement to this payment is something they expect and will enforce, and we have not agreed to postpone receipt of those

payments pending whatever, if ever, a settlement agreement is negotiated. Therefore, any relief Your Honor enters today for the Trustee and Holdings I think should be conditioned on a specific provision that they are required to make any payments due immediately. Thank you.

THE COURT: Thank you.

MS. NEWELL: Good morning, Your Honor. My name is Margaret Newell. I'm an attorney with the Department of Justice and I'm here on behalf of the Federal Communications Commission and the General Services Administration. Your Honor, I represent a constituency that hasn't been heard from yet today, the customers of this telecom company, and the FCC is particularly concerned about the thousands of customers that this company serves with plain telephone service, you know, dial tone service. The General Services Administration, GSA, is very concerned about the services being provided to the federal government. There are, I think, tens of thousands of federal government users that use this service being provided by the Estate, technically, and in a company managed by the Purchaser at this time. These are government agencies such as the FBI, the Coast Guard Search and Rescue. I think that you will be able to hear testimony from the Purchasers' business people about what kinds of services are being provided.

One of the main themes of the Sale Order hearings is

that the Estate, and probably now the Purchasers, are obligated to keep providing service without discontinuation to these customers under Section 214 of the Telecommunications Act. A disruption of service to the customers would have terrible public interest consequences. I mean, people couldn't call the hospital, people couldn't get in touch with the FBI, for a couple of dire -- those would be a couple of dire consequences, and there are many other consequences that would be felt by the customers. But that was a major theme of the Sale Order hearings.

This sale so far has prevented disruption of service to customers. There was one group of customers that has been discontinued with FCC approval. There's another group of customers which has received notice that their services will be discontinued. That process involves a 31-day notice period, which has not yet elapsed, and that notice period is subject to extension by the FCC, if the FCC determines that those customers, those particular customers, have not gotten enough time to get a new carrier. And I believe there is a third group of customers that would not be discontinued but is hoping to receive continuous service. That group includes the GSA. So all the federal government agencies, so far in this case, are proceeding towards a new contract with a new company and will be harmed if service is disrupted.

I believe that the Debtor and the new Purchaser will

be able to prove to Your Honor today that there's a great need for preservation of the status quo. These customers seem to be, I think it's obvious from what's been heard today, caught in the middle of a dispute between the carriers providing service to Winstar and through New Winstar Entity, and I think that this case warrants an extension of time for a short time just to allow those parties to come to an agreement which would be in the interest of them and most of the customers. Thank you, Your Honor.

THE COURT: Thank you, ma'am.

MR. DOLAN: Good morning, Your Honor. My name is Edward Dolan. I represent TST Woodland Funding, landlord with respect to what had been Winstar headquarters in Virginia, and also represent Tishman Speier with respect to 13 remaining rooftop leases for antenna sites. We also represent Interstate Fibercon -- Industry Fiber Network, I'm sorry -- a service provider.

Your Honor, to the extent that we now understand that the Trustee is seeking nothing other than an extension of the time to assume or reject contracts so that that period is coterminous with the 120-day regulatory period, which is to run on either the 18th or 19th of this month later this week, we have no objection to that extension.

But Your Honor, with respect to Interstate Fibernet and with respect to Tishman Speier on the rooftop leases, I

wouldn't want to let the statement that every service provider has been paid 100 percent in advance go without challenging that, at least with respect to those two clients. The amounts owed them, because those services are relatively very modest, they are among the smaller fish in this particular pond, but they are owed, they are in arrears, and they --

THE COURT: But they are hungry fish.

MR. DOLAN: They are, Your Honor. And there are default letters outstanding on both of those.

THE COURT: Thank you, sir.

MS. DINE: Good morning, Your Honor. Karen Dine from Pillsbury, Winthrop on behalf of BNY Capital Resources Corporation. First, Your Honor, I wanted to rise just to correct a statement made by Mr. Stratton. BNY, as an equipment lessor, has not agreed to an extension of time for a decision on the assumption or rejection of the leased equipment. Though there have been discussions about a stipulation, the parties have not been able to reach agreement yet.

Beyond that, Your Honor, I would certainly echo the statements made by numerous of the counsel this morning that with respect to IDT, this motion has not been properly made. They are truly seeking an extension of their time under the Sale Order and the Asset Purchase Agreement, which was not contemplated could be unilaterally extended by just a fiat or

decision of IDT or the Debtor. And while I appreciate the FCC's counsel's comments, I'm afraid that that is a never-ending cycle of, "now they've had 120 days to decide, but we haven't given our customers notice if service is going to be cut off, so we now need longer for the service to be provided," and if we keep coming back in that same situation, it was my understanding that during this time decisions were to be made by IDT or the Debtors as to what equipment they would use or whether there were customers who were going to be cut off, so that those notices could be given to the customers during this time period to fulfill the obligations under the Government regulations.

With respect to the Trustee's time to assume to reject, if in fact it is necessary for them to have something beyond the 18th, that's just a formality to actually accomplish the assumptions or rejections as requested by IDT.

I would submit, Your Honor, that that should be much shorter than until September of this year, that there's certainly testimony from the Trustee that would raise concern about the Trustee's ability to pay any of the equipment lessors or the carriers if it were making an independent decision from IDT as to whether or not it wished to keep any of this equipment. Thank you very much, Your Honor.

THE COURT: Thank you.

MS. IORII: Good morning, Your Honor. Regina Iorii

of Ashby & Geddes. I represent Fleet Capital Corporation, one of the equipment lessors. Your Honor, I rise only to follow-up on a comment that Mr. Stratton made when he rose to speak on behalf of Cisco, and that is this. Although some of the equipment lessors have agreed to extend the time to assume or reject pending the resolution of the adversary proceedings, I believe that that is also contingent on IDT reaching an agreement to extend the time to assume or reject the real estate leases where that equipment is located. So, to a certain extent, any extension that we have with IDT is also contingent on the real estate lessors extending or Your Honor finding that the time can be extended for an assumption or rejection there.

I also rise to just follow-up on what Mr. Stratton said regarding the February 11th Order that Judge Katz entered requiring that the equipment lessors be paid pending the resolution of the adversary proceedings. Fleet also has not been paid fully for the amounts due to it since the Sale Order was entered on December 19th. We did receive a payment in February after the Order was entered. We have not been paid for March. I am told that we were paid for two weeks of April. We, too, reserve our rights under the Order and fully intend to at some point compel, if we are not paid, compel IDT to comply with the terms of the Order. Thank you.

THE COURT: Thank you.

MR. SMOLEV: Your Honor, Richard Smolev on behalf of the Trustee. A couple of points of clarification and some thanks to begin with. First of all, thank you to the Court. It was extraordinarily helpful, I think, to air the issues as we just did. Frankly, much of the confusion that the Court saw on Thursday was a product of the fact that we thought we had many of these structural issues resolved. When we walked into the courtroom, there were some conversations out in the hall, which I won't burden the Court with, that suggested we didn't. And unfortunately, what you saw on Thursday was a bit of a free fall, because we were dealing with some very complex issues in a way that didn't do them justice. So I appreciate the opportunity to allow us to address them.

I would also like to thank counsel. I think everyone addressed issues in a way that was not confrontational, that was constructive, that was meant to educate the Court. All of us, obviously, are advocates, but we took off our advocates' hats just for a moment. So I think the Court understands why we are here and the issues before it.

Just to clarify, so that we're not -- because I heard the word "coterminous" -- I want to make certain that we understand this. One document that the Court has not yet seen which it will see when we get into trial is a Management Agreement which implements the Asset Purchase Agreement and the Sale Order. You are obviously well aware that it

contemplated a transition period. The Management Agreement deals with the relationship between the Seller and Buyer during that transition period. And generally, as a matter of sort of big picture, the Seller, the Trustee, is holding the license. It is our license and until it's transferred it's our license and we have certain reporting obligations that we've been carrying out with IDT, but generally IDT has been managing the business under the terms of the management contract which Judge Farnan also approved. And basically, on operating issues, we have been taking direction from them.

We are not standing before the Court asking to extend the 120-day period under 2.5(a). We have not been requested by IDT to do so. We are not asking the Court to extend the defined term of the regulatory compliance period. Under the Sale Order, we were not requested to do so. What we are asking for, just so the Court is clear, is that we are asking time to implement the 120-day period. If, for example, we are given a notice from IDT on April 18th to assume or assign a contract, we will need time to implement the assumption and assignment process. So obviously we need to have a sufficient period of time to consummate what 2.5(a) contemplated. And as I said earlier, we are also seeking to extend the 365(d)(4) period with respect to contracts which are outside the APA, about which Your Honor will hear some testimony at an appropriate point. Thank you.

THE COURT: You may proceed with your testimony.

MR. SMOLEV: Could I have a short break, now that we understand these issues? I think it would be very helpful if we could take 5 or 10 minutes.

THE COURT: Very well. We'll take a 15 minute recess.

MR. SMOLEV: Thank you.

(Recess)

THE COURT: Thank you. Be seated please. You may proceed.

MR. SMOLEV: Your Honor, when we left off Thursday the Trustee, Ms. Shubert, was on the stand in the middle of cross examination by Verizon's counsel, Mr. Laddin. I presume we should pick up at that spot.

THE COURT: All right. Let the Trustee resume the stand, please.

MR. LADDIN: Your Honor, if I may before the Trustee resumes the stand. I think we can perhaps shortcut some of this. We've had further conversations with the Trustee during the break. And we do have, I think, with respect to service providers, an agreement with the Trustee on the Trustee's motion that I'd like to put on the record. In the event that I am correct, that we do have that agreement, then I think we're down to simply a legal question on whether IDT can join in a non-existent motion at that point. And in the event that

IDT cannot join in a non-existent motion, then I think we can shortcut a lot of this testimony today. There'd be certainly no need for me to do any further cross examination, and no need for me to put on any of our -- our witness. If I could advise the Court of that agreement?

THE COURT: That'd be fine, Mr. Laddin. Let's see if we have an agreement. I'm always anxious to hear something about that.

MR. LADDIN: Okay, Your Honor. First, the time to assume or reject the contracts that could be assumed by IDT under the Asset Purchase Agreement, including the contracts with Verizon, would be extended through and including the 120-day period, which we understand is April 18th.

Second, within 24 hours of the Trustee receiving a list from IDT under Section 2.5A identifying the contracts that it wants to have assumed and assigned to it, the Trustee would provide that list to the counter parties to those contracts, such as Verizon. Within two business days of receiving the list from IDT, the Trustee would file his -- or her, excuse me, motion to assume those contracts and assign those contracts to IDT. The parties would request that the Court hold a hearing on that motion within -- of course at the Court's convenience, but preferably before the end of the month.

Finally, obviously to the extent that IDT did not

identify contracts on the list, those contracts would be, of course, deemed rejected because the date would not be extended past the 18th. The contracts would also be deemed rejected in the event that the motion is withdrawn -- that is the Motion to Assume and Assign. And I think with that, I think, I've adequately stated the arrangement.

MR. SMOLEV: Mr. Laddin is correct, Your Honor, with one slight caveat. We have such a small staff, that I'm terribly concerned about notice within a 24-hour period. We will certainly do the best that we can.

THE COURT: Right. Now, if I understood, all you had to do was send him a copy of the list within 24 hours.

MR. SMOLEV: That's correct. But there may be some counter parties to contracts where I don't even have address information and things of that sort. So I don't want rights to be created, Your Honor, because of an administrative issue. But beyond that, that's correct.

THE COURT: And you think two business days will give you enough to file your Motions to Assume?

MR. SMOLEV: Well, the motion's going to be drafted this afternoon. And I assume the rest will simply be an exhibit. So the answer to that is absolutely. I think we may get the list Thursday night, for example. So that would give us until Monday or so to file the motion. The motion will be a fairly bare bones motion, I suspect.

THE COURT: All right. Gentlemen, the only problem that I have with that -- and I realize this does not apply to the other loans the Trustee's dealing with, is that unfortunately I will not be here during the last week of the month. The first setting I really can give you is May the 6th when we have the Omnibus hearing in this case. It's May the 6th at 10:30. I would like to accommodate you to do it sooner, but I will just not physically be in Delaware.

MR. LADDIN: Can I have one moment, Your Honor?

THE COURT: Yeah, sure.

MR. SMOLEV: Your Honor, while Mr. Laddin is conferring, the agreement does not relate to those contracts which are outside --

THE COURT: I understood that.

MR. SMOLEV: -- the APA.

THE COURT: I understood that.

MR. LADDIN: Your Honor, May 6th is only three weeks away. And assuming, of course, that the Debtor is paying under the terms of the agreements, May 6th would be agreeable.

THE COURT: All right. And when the motion is filed, it should also specify the May 6th at 10:30 hearing date in the motion, so that that will be the notice of the hearing date.

MS. SILVERSTEIN: Your Honor, Laurie Silverstein on behalf of the Affiliates of SBC Communications. We're

generally agreeable to that. And I understand that Your Honor may not be available earlier, although I certainly on behalf of SBC would be willing to go to Texas to have this hearing. The reason I say that, Your Honor, is because I don't want IDT to be able to achieve through the Court's calendar what it could not achieve otherwise. And the objective here was to get a prompt -- or more prompt than usual hearing on these motions, so that they would not again be able to get a delay they otherwise would not be able to get. And so my suggestion would be perhaps we could have those hearings in Texas. Alternatively, I would like something in the Order requiring -- or making IDT responsible for payment in the interim.

THE COURT: Well, I think if they assume, they're responsible.

MS. SILVERSTEIN: Your Honor, what I am concerned about -- and I agree with that -- is that they will have the Debtors file these motions only to have them withdrawn on the eve of the hearing, so --

THE COURT: Well, if --

MS. SILVERSTEIN: -- that they have accomplished a delay.

THE COURT: -- if that happens, you can file an appropriate motion --

MS. SILVERSTEIN: Thank you.

THE COURT: -- against the officers for sanctions.

MR. ALBALAH: Your Honor, may I make it easier on this Court? I believe that -- Your Honor, to make it even easier, may I?

THE COURT: All right. Approach the podium, please, sir, and identify yourself for the record.

MR. ALBALAH: David --

THE COURT: We have to preserve this for posterity for everybody. So --

MR. ALBALAH: David Albalah, McDermott, Will & Emery on behalf of Buyer. Mr. Quarter is in the Courtroom today. He is licensed to practice law in the Supreme Court for the State of New Jersey, and the New Jersey District Court. And I think what he would say now would make the issue that Verizon and SBC are trying to work out much easier. So may I have move his admission?

THE COURT: Yes, sir, that'd be fine.

MR. QUARTER: Thank you, Your Honor, I'm Jim Quarter. Nice to see you. I'm a CEO of IDT Corporation. And I'd like to cut right to the quick. First, I'd like to say that it was IDT that furthered the public policy of not only the Federal Communications Commission, but the Federal Government, by stepping up to the plate and keeping alive the only source of potential competition to the Bells that's in existence in most areas of the United States. That is Winstar. We did it obviously because we thought, number one, it would be a good

thing to do for IDT. But we also believe in the public policy of competition. Also I remember when I was in Congress, or shortly after I left, it was the 1996 Telecommunication Act that was past, was again trying to make sure that there was competition at the local level. I know that there is a lot of competitive local exchange carriers that were born, received financing, and most of them are bankrupt. So the only real play in town left is Winstar.

The way I understand it -- I wasn't here before this Court when this Court granted an Order that allowed us to buy Winstar for \$42.5 million. We pledged to keep it going by putting an additional \$60,000,000 in operating funds. The entire 60,000,000 has been expended. And we're still bleeding about 16 to \$18,000,000 a day. Clearly, Your Honor, the sole purpose of the CLECS of the Bells', the Arbucks' attempt to frustrate the transfer of licenses, is to in essence require us to pay tier, even though our ability not to be tier was the inducement that this Court made that induced us to make the acquisition. So they are using the regulatory process -- frustrating that process in order to drive a truck through this Court's Order. In order to make sure that we don't --

MR. LADDIN: Your Honor, I have to object.

THE COURT: I'm --

MR. QUARTER: Your Honor, may I continue?

THE COURT: I'm gonna let him continue.

MR. QUARTER: Thank you. In order to --

THE COURT: And I'll give you a running objection.

MR. QUARTER: In order to make sure that we don't waste more of Your Honor's time, and the Court's time, clearly there's about 8,000 contracts. We, IDT, have gone through those 8,000 contracts. Indeed, it would be nice to have a few extra days. But if the Arbucks take umbrage upon that, that's not necessary. We can make up our minds today. And we will notify them, as we do now, that we intend to terminate those contracts. Thank you.

THE COURT: Very well. Thank you.

MR. SHERMAN: Your Honor, (indiscern.). I apologize, Your Honor. Andrew Sherman, Sills, Cummis for Qwest Corporation and Qwest Communications Corporation. And I guess Mr. Quarter did clarify the IDT position that they have designated or will designate all contracts, and I presume the Qwest Corporation and Qwest Communications Corporation, to be rejected today. And, Your Honor, if that happens, we had filed a cross motion to terminate all the agreements, obviously, because of the distinction between rejection and termination. And I would just like that heard later today, if possible, Your Honor.

THE COURT: All right. Thank you. Anyone else care to be heard before the Court --

MR. QUARTER: Your Honor, might I clarify something?

This is a notification which will be put in writing on the 18th. But I'm just notifying today as a courtesy as to what the notice will say.

THE COURT: All right, thank you.

MR. LADDIN: Your Honor, Darryl Laddin. Just for the record with respect to the consequences of rejection, I do want the record to reflect that it is our understanding that upon a rejection that the circuits in issue -- if there's a rejection of a contract governing a circuit provided by Verizon, that circuit then would be returned to Verizon's general inventory, and made available. That may result in a disruption in service. Obviously that is a decision that IDT has within its purview, and can make. Thank you.

THE COURT: All right. Does anyone else want to be heard? Let me hear from the Government, please.

MS. NEWELL: Your Honor, I'm not going to seek any relief before this Court today. But I'll just say that the Federal Government, the United States, reserves its right with respect to any discontinuance of service that may occur as a result of what's been announced today.

THE COURT: Thank you, ma'am.

MR. SMOLEV: Richard Smolev on behalf of the Trustee. I don't know if Your Honor wants to hear at this point in the proceeding, but what we would like to do is to make a short either offer of proof or testimony. One, to correct a bit of

the record from Thursday. It was a bit chaotic. And two, to provide the evidence necessary with respect to the motion insofar as there are some contracts for which we are seeking the extension. I don't know how Your Honor --

THE COURT: I would like to hear that, yes, please.

MR. SMOLEV: Do you want to hear it in the form of evidence or --

THE COURT: Yes, sir.

MR. SMOLEV: -- as an offer of proof?

THE COURT: I would like to hear it in the form of evidence, please.

MR. SMOLEV: All right. Then I call Christine Shubert.

THE COURT: Ms. Shubert, you're still under oath. Please, ma'am, if you'd just have this seat. This is just a continuation of her testimony the other day, so what's on the record will be considered part of the record.

CHRISTINE SHUBERT, TRUSTEE'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. SMOLEV:

Q. Ms. Shubert --

MR. SMOLEV: I'm sorry.

(Pause in proceedings)

THE COURT: No, I said it. Don't sit down.

MR. SMOLEV: Oh, I'm sorry.

THE COURT: I want you to move on.

MR. SMOLEV: I'm sorry, Judge. I was distracted.

BY MR. SMOLEV:

Q. Ms. Shubert, the other day you identified the Asset Purchase Agreement which effected the sale of certain of the assets of Winstar. I'm going to take you back to that portion of the testimony. And I want to show you -- if I can approach, Your Honor -- a document which is a management agreement which I will identify as Trustee's Exhibit 2, I guess.

THE COURT: All right.

(Trustee's Exhibit-2 marked for identification)

BY MR. SMOLEV:

Q. Ms. Shubert, are you familiar with the document I just handed to you?

A. Yes, I am.

Q. And that is a management agreement that was executed for what purpose, to the best of your knowledge?

A. It was executed at the time as a closing to allow the Buyer the right to manage the business of Winstar, until the time of the FCC approvals of the transfer of the licenses to the Buyer.

Q. Broadly speaking, is it fair to say that you, as the Trustee of Winstar, continue to hold the FCC licenses?

A. Yes, I do.

Q. And subject to the management agreement is it also fair to say that those licenses and the other assets that were sold are being managed at IDT's direction?

A. Yes, they are.

Q. Have you had various obligations to complete reports and to undertake some other steps at IDT's direction with respect to those licenses? Is that correct?

A. Yes, I do.

Q. When Mr. Sherman was asking you on cross examination the other day whether you are operating or purporting to operate a local exchange carrier, what relation if any did the answers that you gave have to the management agreement and to the licenses that you're holding?

A. Well, the agreement that I'm referring to now, the management agreement, requires that the Buyer has a right to manage and operate the business. In this agreement there are certain obligations that the Bankruptcy Estate, as it related to the Debtor after the conversion, now me, has to the Buyer.

In that agreement I have certain obligations that I have to comply with, and have done so with the Buyer since my appointment.

Q. For example, has IDT given you materials to file with the Federal Government with respect to the licenses?

A. Yes, they have.

Q. Have you complied with that in all respects?

A. Yes, I have.

Q. Has IDT ever told you that you were not in compliance with any obligation that you owed under the management agreement?

A. No.

Q. Has IDT ever advised you that you were not in any compliance with any obligation you might owe under the Asset Purchase Agreement or the Sale Order?

A. No.

Q. Beyond the obligations that are imposed under the Asset Purchase Agreement, the Sale Order, and the Management Agreement, it's a fair statement that you are not in the business of operating a local exchange carrier. Is that correct?

A. That's a correct statement.

Q. Okay. I now want to turn for a moment to the contracts that are going to be subject to the extension motion. And let's first talk about process. You told us the other day that you have a staff of four people. Is that correct?

A. That is correct.

Q. And we've also heard that there are perhaps as many as 8,000 contracts. Have you directed your staff since the Thursday hearing or before the Thursday hearing to identify

those contracts that might be outside the Asset Purchase Agreement, for which you would like additional time to consider the assumption?

A. Yes, I have.

Q. And how did you go about doing that?

A. After the hearing on Thursday I contacted our four personnel, asked them to identify those contracts that might have value to the Estate, to make an assessment of the cost of ongoing operation of that contract, and to do a cost benefit analysis of each of those contracts that would have value to the Estate.

Q. And to your knowledge was that work carried out?

A. Yes, it was.

Q. Did you direct Chuck Persing to come today to testify to support this motion?

A. Yes, I did.

Q. In addition to the contracts which will be the subject of the motion, and for which Mr. Persing will give some testimony in a moment, is Winstar also the party to any joint venture agreements or matters that require your immediate attention?

A. Yes.

Q. Does Winstar have an interest in a property in Hong Kong?

A. Yes, they do.

Q. And that fell outside the APA. Is that correct?

A. Absolutely.

Q. And that's a joint venture for a wireless service in that country?

A. Yes it is.

Q. Have you been attempting to sell that asset?

A. Yes, I have.

Q. Have there been any impediments to the sale of that asset?

A. Yes, there have.

Q. Could you describe them briefly for the Court and counsel?

A. After the conversion to the Chapter 7 bankruptcy, this entity and others like it -- there's Hong Kong, there's Thailand, and Russia all have similar issues involved -- there was some Governmental activity of those countries which, shall we say, became impediment to our ability to sell those assets.

And because of those impediments, we've had to take some action to maximize the value of those assets in those countries. And there are some contracts that are part of -- the joint venture agreement, for one, that we believe is of value to the Estate which we need additional time to either assume or reject.

Q. Are there also corporate government disputes that have arisen in connection with the contract either in Hong Kong or the contract in Russia that you mentioned?

A. There are some disputes that we've been informed by

counsel over there. And those issues need to be resolved.

Q. Is the Estate under time constraints to resolve the corporate government disputes in order to preserve the value of the assets in Hong Kong and Russia?

A. Yes, they are.

Q. And have you devoted your time and the time of your staff or your counsel to the resolution of those disputes for purposes of preserving those -- the value of the assets in Hong Kong and in Russia?

A. We spent a great deal of time in an attempt to negotiate back and forth for those contracts, to try to maximize the value of the contracts to the Estate.

Q. And is the attention that has had to be shown to those assets one of the reasons that you have not been able to direct your staff to fully inform you and get conversant with all of the other contracts that are the subject of this motion to extend?

A. Yes.

MR. SMOLEV: Your Honor, I pass the witness at this point.

MS. NEWELL: Margaret Newell on behalf of the Federal Communications Commission and the General Services Administration.

CROSS EXAMINATION

BY MS. NEWELL:

Q. I just have a couple of questions about the FCC obligations that you mentioned. Part of the FCC obligations that you were testifying about include applications to the FCC for -- regarding the assignment of licenses issued by the FCC.

Is that right?

A. Yes. I believe those are the ones that I signed, yes.

Q. And those applications involved assignment of the licenses, and also waivers of some requirements that would usually be associated with the assignment of the licenses, right?

A. (No verbal response).

Q. Do you want me to be more specific?

A. I know that I signed those contracts and waivers. I don't have them in front of me. But I do recall reviewing those, yes.

Q. Is IDT assisting the Estate with those applications to the FCC?

A. I have been presented those applications through counsel. Whether they came directly through IDT or my counsel, I really can't answer that.

Q. And some of the waivers involved are a waiver of some -- the repayment of some credits given to the Winstar entity when it was issued certain licenses from the FCC. Is that right?

A. I'm not altogether certain without seeing the waivers. But I do recall language to that effect.

Q. And another one was waiver of some construction build out requirements that would be in place following the assignment of the licenses?

MR. SMOLEV: Your Honor, just a brief objection. (Indiscern.) of all of these contracts (indiscern.).

THE COURT: Well, I think she's got a right to ask these questions.

BY MS. NEWELL:

Q. Do you know?

A. Actually, my -- Chuck Persing who is here today would be probably best able to answer those questions with regard to those documents, more so than I at any rate.

Q. Getting back to the one with the credit, assuming that the -- and these are still pending with the FCC, right?

A. As far as I know, yes.

Q. And so if the FCC were to grant the application to assign the licenses, but not to grant the waiver application for the repayment of the credit, would any monies repaid to the FCC come from the Estate? Or will they come from the Buyer under their agreement? Do you know?

MR. SMOLEV: Objection to the extent it calls for a legal conclusion.

THE COURT: Well, she can answer whether she knows or not.

A. I'd have to consult with my counsel first in order to be able to answer that question.

BY MS. NEWELL:

Q. Okay. Thank you very much.

MS. NEWELL: No further questions.

THE COURT: Thank you. Any further questions of this witness?

MR. SMOLEV: Your Honor, the only thing I would do is offer Trustee's Exhibit 2, the Management Agreement, into evidence.

THE COURT: There being no objection, it'll be received. Thank you, ma'am, you may step down.

(Trustee's Exhibit-2 admitted into evidence)

A. Thank you.

MR. SMOLEV: Your Honor, I now call Chuck Persing.

CHUCK PERSING, TRUSTEE'S WITNESS, SWORN

THE COURT: If you'll spell your last name for us, please, sir.

MR. PERSING: Sure. Chuck Persing, P-E-R-S-I-N-G.

THE COURT: Thank you, sir.

DIRECT EXAMINATION

BY MR. SMOLEV:

Q. Mr. Persing, I think I gave you a promotion before when I referred to you as a CFO. Could you tell me what your title was Winstar was in Chapter 11?

A. Yes. I was Vice President of Corporate Development.

Q. How many employees did Winstar have before the IDT sale?

A. Approximately -- prior to bankruptcy, about 4,700. By the time we sold to IDT there was probably around 800.

Q. How many countries did Winstar do business in at the time of the IDT sale?

A. I guess that question's better asked at the time of bankruptcy. Most of those subsidiaries were liquidated prior to the sale to IDT. We had licenses in approximately 20 countries, and we were operational in a good number of those, maybe more than half.

Q. Once the case was converted, did the Trustee retain any former Winstar employees for purposes of helping to liquidate the assets for the benefit of the Creditors in these Estates?

A. Yes.

Q. How many employees?

A. Four of us.

Q. And who are they are what are their -- or what were their positions with Winstar prior to the conversion?

A. Don Schneider -- he was head of personnel and administrative matters, Ken Zingini worked for the corporate

counsel, Paul Lange, who was the Vice President of Finance, and myself.

Q. Physically where are the four of you located?

A. Currently we're in 685 Third Avenue in New York City.

Q. And what location is that?

A. That's the former Winstar headquarters.

Q. Who is currently occupying that space, or most of the space that you're not using?

A. AON purchased our lease. So they're actually occupying 100% of that space now, aside from the four of us.

Q. And have the records -- where are the records of Winstar located at the moment?

A. That's a good question. When we -- from the time we went into bankruptcy, we were consolidating floors. And every time we terminated a batch of people, they actually left very expeditiously. And so the remaining people were left to handle all of the records. A lot of those records were actually packed up and sent to various storage facilities by administrative personnel. And actually that's causing us a bit of problem today, because there is not appropriate record documents for a lot of the assets that the Estate has retained.

Q. Are the four of you physically employed by the Trustee, or do you have some different employment relation?

A. We have an employment agreement that was executed by the Trustee in late March. And it was carved out by the Bank Group. So I guess we're employees of the Estate, and we're reporting to the Trustee.

Q. Are you also under any contractual relationship or any benefit relationship, things of that sort, with IDT?

A. IDT currently is processing our payroll. And we remain on the IDT payroll and benefit plans.

Q. Is there an ongoing transition services agreement between IDT and Winstar?

A. We're in the process of negotiating that. We've been cooperating with each other. And there's been a first draft. And there's some additional information that needs to be supplied by IDT to conclude those negotiations.

Q. Did you have any conversations with the Trustee before she directed counsel to file the motion to extend the time to assume contracts?

A. Yeah. We spoke about, you know, not knowing the full population of the contracts. The assets that the Estate has retained include investments. They include causes of actions. They include some operating companies. They were handled by different people within the organization. And some of those records are not accessible to us as we sit here today. And we need to go into record storage to get those. A number of

stock -- of the investments we made. There's asset purchase or stock purchases agreements of the ongoing businesses. Some of those files have been packed up. And the overseas stuff has been packed up. So we're actually having some trouble getting those agreements.

Q. As you sit here today, do you have a rough understanding of the number of contracts that have now fallen under the Trustee's jurisdiction, but might be outside the scope of the Asset Purchase Agreement, in that they were not assumed agreements that IDT agreed to look to?

A. I don't have an exact number. But there's in the 50 to 75 contract range. The number -- and I don't know if they were executory contracts or not. But we have a number of stock purchase agreements, a number of operating contracts with Office.com, we have some joint venture agreements and shareholder agreements with the Hong Kong Land, and we have a number of shareholder agreements for each of the investments that we own. And certainly there was contracts that we entered into with various vendors. And there are certain causes of actions against those vendors. So there's contracts underlying those.

Q. You heard me ask Ms. Shubert questions about corporate government disputes in -- with regard to joint ventures in Hong Kong and Russia. Has any of your time or Mr. Zingini's

time since the conversion of this case been consumed by those issues?

A. Yes. Ken and I have been spending a good deal of time both with the Hong Kong Land joint venture and with the shareholders in Russia. My wife can testify to that at Disney World I spent a number of evenings on the phone.

Q. You also mentioned Office.com. What's the nature of Winstar's interest with Office.com?

A. Office.com is a website. And currently its activities involve selling advertising and providing e-mail lists to various advertisers. It has one employee. And we have two sales representative teams working for us selling those ads. So it's an ongoing business. It refreshes the website and actually sells advertising.

Q. And in your best estimate is this realizing a value for the Estates if the Estate has time to attempt to sell its interest in the Office.com relationships?

A. Most certainly. We have a number of hard assets, intellectual assets, the URL. And it has an ongoing revenue stream.

Q. Based upon your familiarity, to the extent you have one, with the 50 to 75 contracts which you said might be subject to this motion -- and I understand that's your best estimate -- do you have an understanding whether these contracts could

produce value for the Estate if the Estate had time to attempt to realize that value?

A. Yes, certainly for a good number of those there would be value produced. Obviously Office.com we want to keep the operations running. The shareholders agreements, the joint venture agreements gave us our rights. And if they were somehow to add that we could lose some rights and not be able to effectively monetize those investments and causes of action, certainly we won't want to have those contracts expire, so we can continue our, you know --

Q. Did you --

A. -- actions against those.

Q. I'm sorry to interrupt. Did you receive a direction from Ms. Shubert following Thursday's hearing to identify as many contracts as possible that specifically could be identified to this motion?

A. Yes.

Q. What steps did you take to do so, and what results?

A. I was able to identify five of the Office.com -- or four or five of the Office.com contracts. Obtained, I think, one or two copies of those. I'm waiting for copies from various -- from an outside attorney for some of those contracts. I've sent an e-mail request out to the attorneys in Hong Kong to see what contracts I can get from them. Ken Zingini and Paul

Lange have gone through their documents to see what contracts they have. They haven't gotten back to me on the results of those -- their efforts at this point. But I don't think they were successful. The next steps would be to obviously go into the record storage facilities and see if I can obtain those contracts. Or go to other outside counsel who wrote them the deals, to try to get those contracts.

Q. Based upon the process that you've set in motion, do you feel that if the Court grants the motion as requested, and grants until September an extension of time, that you will have sufficient time to assist the Trustee in the compilation of information to help the Estate begin to realize value for those assets?

A. I believe so. I mean I'm -- the question is when the records were being packed away, how many boxes do we have to go through to get all the contracts. Hopefully, if I can't find the contracts, we'll be able to find another way to realize value. But I'd like to have the contracts to make sure we're pursuing the right avenues in trying to, you know, maximize that asset for the Estate. But September seems like a reasonable amount of time --

Q. In addition --

A. -- to go through that.

Q. -- to the contracts that you've identified, the joint

ventures and the various other assets that the Estate holds, does the Estate also have any causes of action that you've devoted any time -- you or the four members of the Trustee's staff have devoted any time to begin to become familiar with?

A. Yes. We're effectively -- that work is pretty much new to all of us. So we've assigned some of the causes of actions between the four of us, and we're starting to look at those now. The pressing thing that kept us busy early on was trying to sell the operating entities. We've sold a number of ISPs.

We sold a telebase. And we're working on Office.com. They were the quickly realizable assets. And now we're going into the medium term assets --

Q. What sort of --

A. -- to try to monetize those.

Q. -- possible preference claims does the Estate have?

A. During the period -- the 90-day preference period, there was over \$300,000,000 worth of expenditures made. Paul Lange was actually heading up those efforts to work with our outside -- the Trustee's accountants to go through those. We've identified a number of disbursements and allowances that we're investigating. That work started about two weeks ago. And last week we took a site visit down to Herndon, where a number of those records are. And we're starting to dig in on that network.

Q. With respect to the priorities that the Trustee has set for the management of the Chapter 7 Estate, and the direction of the staff, was any concern expressed with regard to possibly losing access to personnel who might have information with regard to the preference pool and other causes of action?

A. Oh, yes. When IDT purchased the company, there was approximately 7 to 800 people working for them. They have further reduced the staff. And I believe that they -- coincidentally it's May 6th where a number of additional personnel from IDT are being -- or new Winstar are being terminated. And I believe that number is in the 4 to 500 range. So access to people is very important for us.

Q. And has the priorities that have been set in terms of emphasizing first the assets that could be sold in the joint ventures and now looking at the preferences in part respective to fact that you need access to people that might not be available at some point in time, and then that would allow you to turn to the contracts which are the subject of this motion, is that a fair way of establishing the priorities that were set?

A. Oh, yes, yes. You know, we talk about, you know, who are we going to get to help us do this. So, yes.

MR. SMOLEV: Nothing further.

THE COURT: Anyone have any questions of this

witness? Apparently not. Mr. Persing, you convinced them. You may step down, sir.

A. Thank you.

MR. SMOLEV: Your Honor, that's all the evidence that the Trustee intends to put in, in support of the --

THE COURT: All right.

MR. SMOLEV: -- of the motion.

THE COURT: Anyone else have any evidence they'd care to present to the Court?

ALL: (No verbal response).

THE COURT: Very well. Ladies and gentlemen, we will take a recess of about 15 to 30 minutes. We'll notify you when we're ready. The Court wants to review these documents and make sure it's clear, and also to make sure that the Court's ruling is clear. So I will be back with you. And we'll notify you when we're ready. We'll be in recess.

(Recess)

THE CLERK: The Court is reconvened.

THE COURT: Thank you. Be seated, please. Ladies and Gentlemen, as is pretty obvious, the only motion before the Court is the Trustee's motion for an Order extending the time within which the Trustee must assume or reject executory contracts and unexpired leases, and then pursuant to Section 365 of the Bankruptcy Code. Section 365(D)(1) provides that

in a case under Chapter 7 of this Title if the Trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the Debtor within 60 days after the Order for relief, or within such additional time as the Court for cause within such 60-day period fixes, then such contract or lease is deemed rejected.

The crowded docket of the Delaware Courts caused a slight modification to that in Local Bankruptcy Rule 9006-{dash}2, which provides that if a motion to extend time to take any action is filed before the expiration of the period prescribed by the Code, the Federal Rules of Bankruptcy Procedure, these Rules, the District Court Rules, or Court Order, the time shall automatically be extended until the Court acts on the motion without the necessity for the entry of a Bridge Order.

So the Trustee's right has been extended to today.

First, I want to say that anything this Court does cannot and should not and will not affect the Federal Telecommunications Act. The parties still have whatever rights or obligations they have under that Act. We spent a lot of time discussing the Sale Order signed by Judge Farnan on December 19th of 2001. It appears that that was a sale of substantially all of the Debtor's telecommunication assets located in the United States. Section 2.5A of that Order gave the Purchaser 120 days to assume or reject contracts with

respect to the assets it was acquiring. All parties agree that that time expires April 18th, 2002. The procedure is for the Purchaser to notify the Trustee of the assumption or rejection. And then the Trustee is obligated -- or originally it was Winstar, but now the Trustee is obligated to carry out those instructions.

The Court will, therefore, provide that with respect to the contracts that are covered by the purchased assets, the final list of assumption or rejection is to be delivered, as the parties have all agreed, on April 18th. It is to be delivered to the Trustee's counsel, who will then notify within 24 hours, if at all possible, the parties of the list -- certainly notify those that can be notified within that time, and as expeditiously as possible to the rest -- then to file a motion to assume, if appropriate, within two business days. And that motion is to establish a hearing on the assumption for May 6th, 2002 at 10:30 a.m. in this Courtroom.

If a contract or lease is not assumed, it is deemed rejected. The other party, the third party to any rejected or deemed rejected lease or contract can terminate its service and/or take possession of its property, subject again to any restrictions in the Telecommunications Act.

With contracts not relating to the sold assets -- those sold under that Order -- the time to assume or reject

executory contracts is extended to September 25 of the year 2002. However, during that time the Trustee shall timely fulfill all of Winstar's, or whatever Debtor it might have been, obligations under those contracts until they are assumed or rejected. It appeared that most of those discussed by the witness did not need payment. But if some need payment, then the payment must be made. I will ask the Trustee's attorney to draw an appropriate Order.

Ladies and gentlemen, for your information -- and I think most of us are aware that the Purchaser has filed a number of adversary proceedings asserting that what are labeled to be leases are, in fact, security agreements. It seems to me that the issues are relatively narrow in that regard. Namely that we have to determine the State law. And I assume there's a choice of law provision in most of those contracts. But what State law ought to apply, and then whether under that State law the particular terms of this document classify it as a lease or a security agreement. For this reason, the Court will issue Orders setting all of those adversary proceedings for trial at 1:30 p.m. on May 6th of this year. If a proper motion is made, the Court will consider at the same time as the adversary proceeding any claims by the parties for violation of Judge Katz's Order with respect to the payment of rent, whether those requests be for sanctions and/or damages. We will be in recess.

(Court adjourned)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Signature of Transcriber

Date